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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/099,930	03/13/2002	Michael R. Klardie	14484	2702

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DORSEY & WHITNEY LLP  
INTELLECTUAL PROPERTY DEPARTMENT  
50 SOUTH SIXTH STREET  
MINNEAPOLIS, MN 55402-1498

EXAMINER

BUMGARNER, MELBA N

ART UNIT PAPER NUMBER

3732

DATE MAILED: 03/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/099,930

Applicant(s)

KLARDIE ET AL.

Examiner

Melba Bumgarner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 05 January 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 9, 10, 13, 16, 18-26, 35, 37, 40, 41, 43, 46-48, 52, 53, 59, 60, 64-66, 68, 69 and 80-82 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Continuation of Disposition of Claims: Claims pending in the application are 1-5,7,9,10,13,16,18-26,35,37,40,41,43,46-48,52,53,59,60,64-66,68,69 and 80-82.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 24, 35, 37, 40, 52, 59, 66, and 80 are objected to because of the following informalities: contain recitations of insufficient antecedent basis and/or errors in the claimed language that need correction as in earlier office action. Applicant is asked to review claims carefully. Appropriate correction is required.
2. Claim 64 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 52. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 40 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim is dependent on a canceled claim.

### ***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re*

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*Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-10, 13, 16, 18-26, 35, 37, 40, 41, 43, 46-48, 52, 53, 59, 60, 64-66, 68, 69, and 80-82 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 3-6, 8-17, 14-19, 41, and 42 of copending Application No. 10/356,735. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art to have a retention flange and external abutment features in the impression cap of the combination or system.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-3, 5, 7, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Chalifoux (5,458,488). Chalifoux discloses a combination comprising a dental implant 45 having

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a longitudinal axis and a circumferential collar with an outermost diameter 62, and an impression cap 48 comprising an elongate body 50 having a longitudinal axis, a first end and a second end, at least the second end being provided with an opening, the opening extending longitudinally into the body from the second end forming an inner cavity, a press fit mechanism comprising a press fit surface formed near the second end of the body, figure 3, the press fit surface being an internal surface 60 with internal sidewall in engagement with the circumferential collar at its outermost diameter when the impression cap and the dental implant are in press fit connection (figure 5), the internal side wall being substantially parallel to the longitudinal axis at the point of engagement between the wall and collar and the internal side wall extending in a direction substantially parallel to the longitudinal axis from the point of engagement toward the second end. generally parallel to the axis of the implant and in engagement with the collar at its outermost diameter when the implant and cap are connected. The circumferential collar includes an outer, upper shoulder 64 and the cap includes an inner circumferential angled surface and having a size and shape complementary to the outer, upper shoulder. The press fit mechanism comprises a circumferential flange 66 extending downwardly toward the second end and from the body, the flange comprising the internal surface and the angled surface. The flange further comprises a tapered surface, the tapered surface extending downwardly from the internal surface and away from the implant. The flange having a bottom end corresponding to the second end, the flange further comprising an outer angled surface, the outer angled surface extending downward and inward to the bottom end of the flange. The implant includes an implant table 58 and impression cap being elastic.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chalifoux in view of Porter et al. Chalifoux discloses a combination that shows the limitations as described above; however, Chalifoux does not show the impression cap being color coded. Porter et al. teach an impression cap color coded [0043] line 3. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the cap of Chalifoux to be color coded in order to use the color to indicate its size in view of Porter et al. Porter et al. also teach the corresponding components coded in the same color.

***Response to Arguments***

11. Applicant's arguments with respect to the rejected claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melba Bumgarner whose telephone number is 571-272-4709. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached at 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Melba Bumgarner  
Primary Examiner